

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**RICKY SCRUGGS (# 123570)**

**PLAINTIFF**

**v.**

**No. 4:08CV94-P-A**

**ILAP SUPERVISOR KATHRYN MCINTYRE**

**DEFENDANTS**

**MEMORANDUM OPINION**

This matter comes before the court on the *pro se* prisoner complaint of Ricky Scruggs, who challenges the conditions of his confinement under 42 U.S.C. § 1983. For the purposes of the Prison Litigation Reform Act, the court notes that the plaintiff was incarcerated when he filed this suit. For the reasons set forth below, the instant case shall be dismissed for failure to state a claim upon which relief could be granted.

**Factual Allegations**

On November 28, 2007, the plaintiff placed in the hands of Kathryn McIntyre, supervisor for the Inmate Legal Assistance Program a *pro se* petition for post-conviction collateral relief so that she could copy the petition and send the original to the DeSoto County Circuit Court for filing. Neither the original document nor copies of it have been seen since that day.

**Denial of Access to the Courts**

Under the Supreme Court's decision in *Bounds v. Smith*, 430 U.S. 817, 821 (1977), prisoners possess a constitutional right of access to courts, including having the "ability . . . to prepare and transmit a necessary legal document to court." *Eason v. Thaler*, 73 F.3d 1322, 1328 (5<sup>th</sup> Cir. 1996) (quoting *Brewer v. Wilkinson*, 3 F.3d 816, 821 (5<sup>th</sup> Cir. 1993), *cert. denied*, 510 U.S. 1123 (1994)). The right of access to the courts is limited to allow prisoners opportunity to file nonfrivolous claims challenging their convictions or conditions of confinement. *Jones v.*

*Greninger*, 188 F.3d 322, 325 (5<sup>th</sup> Cir. 1999). “Interference with a prisoner’s right to access to the courts, such as delay, may result in a constitutional deprivation.” *Chriceol v. Phillips*, 169 F.3d 313, 317 (5<sup>th</sup> Cir. 1999) (citations omitted). However, “[a] denial-of-access-to-the-courts claim is not valid if a litigant’s position is not prejudiced by the alleged violation.” *Ruiz v. United States*, 160 F.3d 273, 275 (5<sup>th</sup> Cir. 1998); *Henthorn v. Swinson*, 955 F.2d 351, 354 (5<sup>th</sup> Cir. 1992), *cert. denied*, 504 U.S. 988 (1992) (citing *Richardson v. McDonnell*, 841 F.2d 120, 122 (5<sup>th</sup> Cir. 1988)). It is only when a prisoner suffers some sort of actual prejudice or detriment because of the alleged denial of access to the courts that the allegation becomes one of a constitutional nature. *Walker v. Navarro County Jail*, 4 F.3d 410, 413 (5<sup>th</sup> Cir. 1993); *see Howland v. Kilquist*, 833 F.2d 639, 642 (7<sup>th</sup> Cir. 1987). A plaintiff must show real detriment – true denial of access – such as the loss of a motion, the loss of a right to commence, prosecute or appeal in a court, or substantial delay in obtaining a judicial determination in a proceeding. *Oaks v. Wainwright*, 430 F.2d 241 (5<sup>th</sup> Cir. 1970).

In this case, the plaintiff has not alleged that he has suffered any legal detriment at all. In addition, the plaintiff has not alleged that he drafted a second petition after the first was apparently lost – and attempted to get the second *pro se* petition copied and filed with the DeSoto Count Circuit Court. As such, the plaintiff’s allegations shall be dismissed for failure to state a constitutional claim. A final judgment consistent with this memorandum opinion shall issue today.

**SO ORDERED**, this the 20<sup>th</sup> day of August, 2008.

/s/ W. Allen Pepper, Jr.  
W. ALLEN PEPPER, JR.  
UNITED STATES DISTRICT JUDGE